

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 13 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JORGE MANACES ORTECHO-  
ALVAREZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 22-1422

Agency No.  
A208-967-405

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted July 11, 2023\*\*  
Seattle, Washington

Before: GRABER, GOULD, and FRIEDLAND, Circuit Judges.

Petitioner Jorge Manaces Ortecho-Alvarez (“Ortecho-Alvarez”), a citizen of Peru, timely petitions for review of a Board of Immigration Appeals decision (“BIA”) dismissing his appeal of the denial of his withholding of removal

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

application. We deny Ortecho-Alvarez's petition.<sup>1</sup>

1. We review for substantial evidence the factual findings underlying the BIA's denial of withholding of removal. *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022). Under this standard, we "must uphold the agency determination unless the evidence compels a contrary conclusion." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019).

2. Substantial evidence supports the BIA's determination that Ortecho-Alvarez did not show a clear probability of persecution if he were to be returned to Peru. Although Ortecho-Alvarez identifies a few violent incidents that have occurred to former members of the military, he has not pointed to sufficient evidence in the record to compel the conclusion that a "systematic pattern or practice of persecution" currently exists against his particular social group of elite combat veterans of the Peruvian Army who have fought against the Shining Path, as required by the applicable regulations. *Wakkary v. Holder*, 558 F.3d 1049, 1060 (9th Cir. 2009) (cleaned up). A single attempt against a sub-officer in Peru, allegedly conducted by the Shining Path, is not enough to establish a pattern or practice of persecution. Ortecho-Alvarez has also not identified sufficient evidence to compel us to reach a different conclusion than that reached by the BIA. Given the lack of direct evidence that the Shining Path is looking for him, it is unlikely that the Shining Path would identify him after

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<sup>1</sup> The motion to stay removal (Dkt #3) is denied as moot. The temporary stay of removal will expire upon issuance of the mandate.

almost thirty years.

3. Substantial evidence also supports the BIA's determination that the Peruvian government has not shown an inability or unwillingness to control the Shining Path. We have previously held that a government that "demonstrates efforts to subdue [violent nonstate actors]" can be sufficient to show governmental willingness and ability. *Hussain v. Rosen*, 985 F.3d 634, 648 (9th Cir. 2021). The evidence proffered by Ortecho-Alvarez himself shows that, although the resurgence of the Shining Path is undoubtedly concerning, the Peruvian government is aware of the group's rise and is taking steps to combat it. We see no substantial evidence of a likelihood that, upon return to Peru, Ortecho-Alvarez will be subjected to persecution or injury from the Shining Path.

**PETITION DENIED.**